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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 11, 2007

04od-342

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Sale of Reclaimed (Filled) Land to Harry Yamada Trust and  
Florence Yamada Trust, Kaneohe, Oahu, Tax Map Key: (1) 4-6-  
23:49 seaward.

APPLICANT:

Harry Yamada Trust and Florence Yamada Trust, whose mailing  
address is 46-149 Yacht Club Place, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe, Koolaulupoko, Oahu  
identified by Tax Map Key: 4-6-23:49 seaward, as shown on the  
attached map labeled Exhibit A.

AREA:

76 square feet, more or less.

ZONING:

State Land Use District: Urban  
County of Honolulu CZO: Residential (R-7.5)

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO   X

CURRENT USE STATUS:

Vacant and unencumbered

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Applicant is a landowner and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide documentation that he/she is the owner of the property abutting the subject reclaimed land;
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the reclaimed land;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 4) Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

Pursuant to Section 171-53(b), HRS, the Board may sell reclaimed land to the abutting owner if the land was filled as of June 12, 1962 and the Board finds that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located. Further, if the reclaimed land was filled in or made with the approval of government authorities and not otherwise filled in or made contrary to the public interest, the reclaimed land is valued as submerged land. Otherwise, it must be valued as reclaimed or fast land.

The applicants are pier owners participating in the Kaneohe Bay

Piers Amnesty Program. During the preparation of the maps required for the issuance of the pier lease, a portion of reclaimed land enclosed by a seawall was shown to be encroaching onto the State lands. The encroaching area is about 76 square feet (see Exhibit B).

Staff does not recommend imposing a fine, pursuant to Section 171-6(12), for the encroachment constructed without prior consent by the State based on the encroachment being less than the 100 square foot threshold as approved by the Board at its June 28, 2002 meeting under agenda item D-17.

The Office of Conservation and Coastal Lands (OCCL) staff has determined that the issuance of a disposition for the encroaching portion of the reclaimed land would have no adverse impacts on natural resources, including beach resources and therefore has no objections to the issuance of a land disposition. OCCL staff reviewed the applicants' encroachment history and visited the area (see OCCL letter, Exhibit C).

Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Government agencies were asked to comment on the seawall sale request. Of the agencies that responded (Dept. of Hawaiian Home Lands and Office of Hawaiian Affairs), no objections were raised. The Office of Hawaiian Affairs did, however, request that the one-time payment be at fair market value, which is the standard policy for all sales of reclaimed land.


RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above:

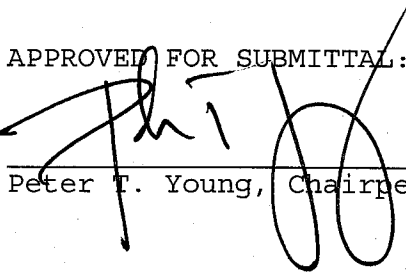
1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-6-023:049, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Find that the sale of the subject reclaimed land is not prejudicial to the best interest of the State, community or area in which subject reclaimed land is located.
3. Authorize the sale of the subject reclaimed land to Harry Yamada Trust and Florence Yamada Trust covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The Grantee shall consolidate the reclaimed land with the Grantee's abutting property through the County subdivision process;
- b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
- c. Review and approval by the Department of the Attorney General; and
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

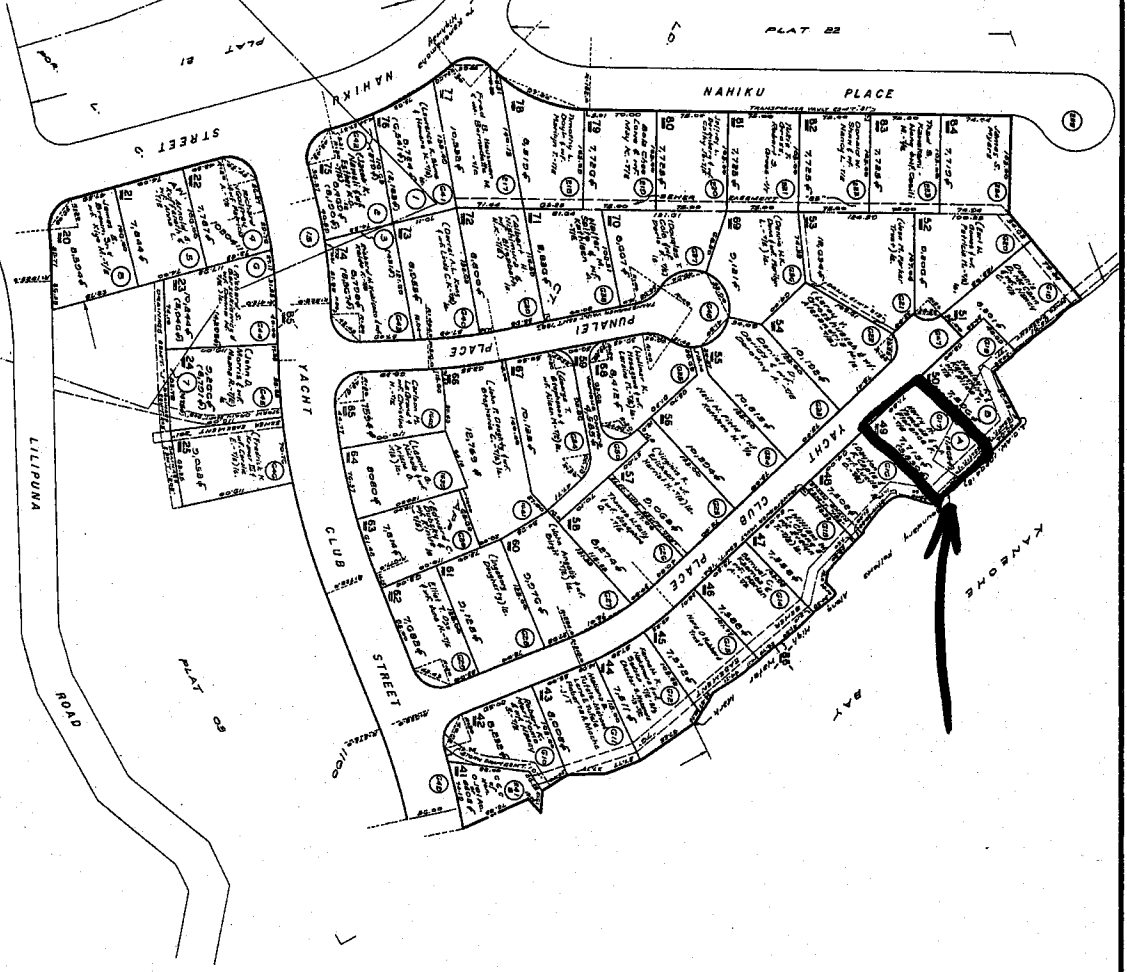
  
Al Jodar  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson

DWG. NO. 5880  
 SOURCE: T.M.B. & CO. CH. APP. 1987 (REV. 87-88)  
 BY: M.V. L.B.M. DATE: July 25, 1988

FOR: ALI SHORES, MEIA, KOOL, APOKO, OAHU (formerly por. 4 - 6 - 03)



Approved: [Signature]  
 10/10/88

NOTE: All lots covered by  
 this map are subject to  
 the provisions of the  
 Hawaii Real Property Tax  
 Law, Chapter 215, HRS,  
 and the rules and regulations  
 of the Department of  
 Land and Natural Resources,  
 for the purpose of  
 determining the  
 amount of the  
 real property tax.

ZONE	LOT	SECTION	PLAT
4	6	23	

EXHIBIT "A"

4-C-23:49 46-149 Yacht Club Pl  
2/6/07

K A N E O H E B A Y

SCALE: 1 INCH = 20 FEET  
TRUE NORTH

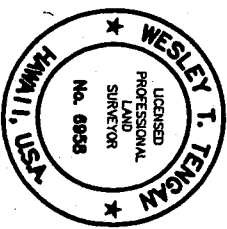
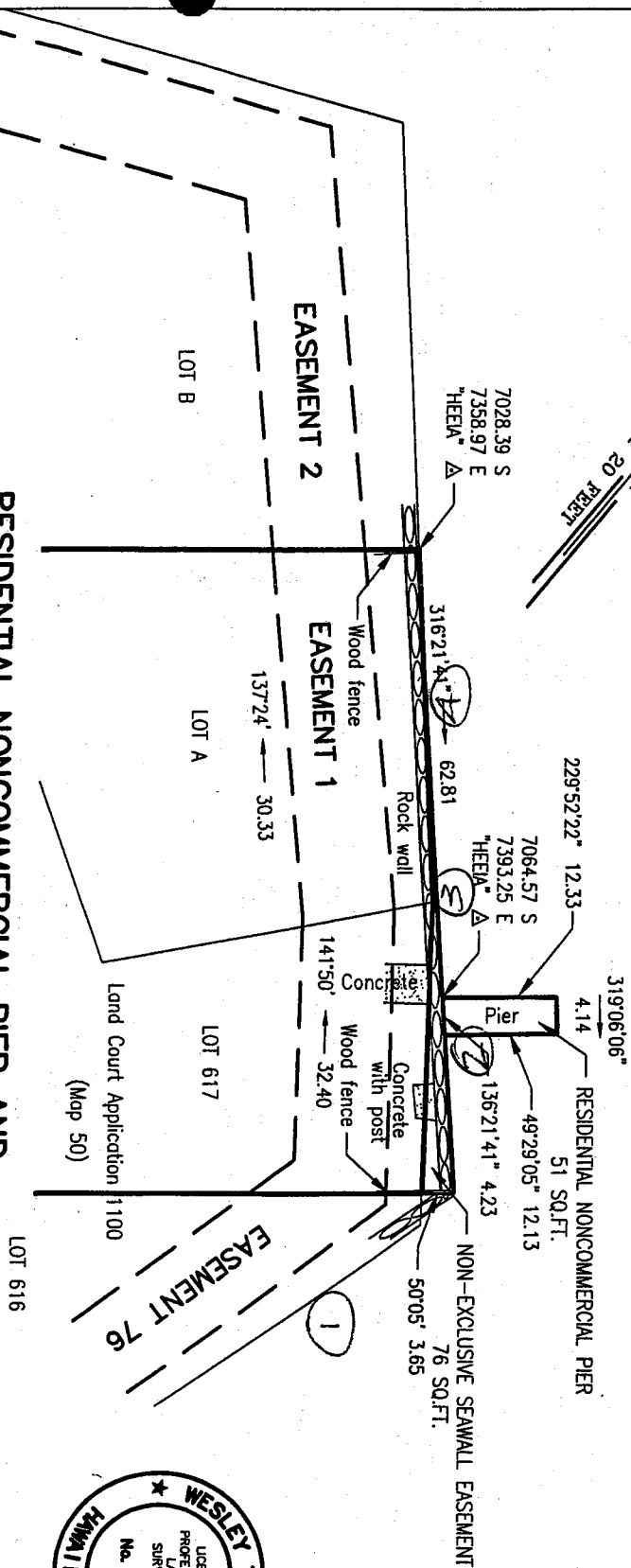
RESIDENTIAL NONCOMMERCIAL PIER AND  
NON-EXCLUSIVE SEAWALL EASEMENT

Fronting Lot A and Lot 617 of Land Court Application 1100

as shown in Map 50

Owner: Harry Yamada  
46-149 Yacht Club Place

Kaneohe, Koolaulupoko, Oahu, Hawaii



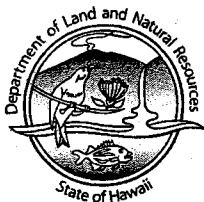
THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION

Signature

EXHIBIT "B"

TMK: 4-6-23:49

LINDA LINGLE  
GOVERNOR OF HAWAII



PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

MAR 14 2007

64-1-342

File Number Encroachment: OA-07-04

**MEMORANDUM:**

TO: Al Jodar, Land Agent  
Land Division

FROM: Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

SUBJECT: Request to Resolve State Land Encroachment at Kaneohe Bay, Oahu (TMK: 4-6-23:49) Yamada

This is in response to your February 9, 2007 request for our review of a state land encroachment seaward of private property at Kaneohe Bay, Island of Oahu.

According to information and maps contained with your request, there appears to be approximately 76 square feet of encroachment (wall).

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State or at the County Planning/Building Department for the subject improvements. However, the Board of Land and Natural Resources issued a Conservation District Use Permit for a pier that abuts the property in 1984 (OA-1722).

OCCL staff reviewed aerial photographs of the area. These photographs date back to 1961 and 1975 respectfully. In the 1975 photograph, the shoreline appears to be straightened or linear which seems to confirm the presence of a wall. A wall cannot be confirmed in the 1961 photograph. In the questionnaire that was submitted with the request, there is reference to a General Plan for the Alii Shores prepared by R.M. Towill Corporation, dated 1961. This plan appears to corroborate the presence of a seawall at the seaward face of the property. Photographs of the wall submitted with the request also appear to confirm that the wall was built a long time ago.

**EXHIBIT "C"**

Based on the evidence submitted with this request, the DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

The tidal area is a mud flat.

Public Access:

Public access to the shoreline is poor. The area is not suited to beach recreation. However, the waters offshore are popular for boating recreation.

Effect of Removing the Encroachment on:

*Beach Resources: The removal of the encroachment could have a negative impact on coastal waters, if done improperly. Removal of the wall without immediate placement of erosion control measures could result in sedimentation of state waters.*

*Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachment. The area is not suitable for shoreline access. Boating and fishing would not be affected.*

*Affect on Adjacent Properties: It is not know what effect removal of this encroachment would have on the surrounding parcels.*

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement would have no adverse impacts on natural resources, including beach resources and public access. Therefore, the OCCL has no objections to a disposition request being processed.



Pursuant to Chapter 171, the landowner is required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to the Office of Conservation and Coastal Lands at 587-0377, should you have any questions.

Cc: Oahu Board Member  
Chairperson's Office  
City and County of Honolulu  
Department of Planning and Permitting